

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MICHAEL A. HERNANDEZ,

)

4:15CV3115

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Plaintiff,

)

)

v.

)

**MEMORANDUM  
AND ORDER**

)

SCOTT FRAKES, K. J.

)

HUTCHINSON, STEVE

)

ELMSHAEUSER, DAVE

)

EUBANKS, KEN HART, and

)

TRAVIS P. O’GORMAN,

)

)

Defendants.

)

This matter is before the court on Plaintiff Michael Hernandez’s Motion for Injunction and Temporary Restraining Order. (Filing No. [10](#).) Hernandez is a pro se litigant incarcerated at the Tecumseh State Prison in Tecumseh, Nebraska. He filed a Complaint (Filing No. [1](#)) in this court on September 28, 2015, in which he claims he is entitled to money damages based on prison overcrowding and discrimination against Sioux Indians, and for violations of his constitutional rights that occurred during his state criminal proceedings.

In the motion at issue here, Hernandez asks this court to order that (1) the Nebraska Department of Correctional Services “provide [him] adequate time in the Law Library,” (2) the law librarian “copy all Exhibits, Case Law, State and Federal Statutes, and Jurisprudence for [him] in his pending Actions,” and (3) “prison staff [be] available at all times to copy documents when the law library is open.” (Filing No. [10 at CM/ECF p. 1-2](#).) Finally, Hernandez asks this court to order prison staff to stop opening his legal mail, stop reading his legal mail during cell searches, and stop retaliating against him. (Filing No. [10 at CM/ECF p. 2](#).)

The court will deny Hernandez's motion for three reasons. First, Hernandez's motion is improper because its subject matter is unrelated to his underlying cause of action.

Second, Hernandez did not address the factors the district court should consider when determining whether to grant a motion for preliminary injunctive relief. *See [Dataphase Sys., Inc. v. C.L. Sys., Inc.](#), 640 F.2d 109, 114 (8th Cir.1981)* (“[W]hether a preliminary injunction should issue involves consideration of (1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest.”). Moreover, the court has carefully reviewed the record and finds that Hernandez's allegations in this matter do not entitle him to preliminary injunctive relief. Hernandez made no showing that he faces a threat of irreparable harm or that he is likely to succeed on the merits of his claims.

Third, on October 6, 2015, the court assessed an initial partial filing fee in this case in the amount of \$80.75. No further review of this case will take place until the initial partial filing fee is paid.

IT IS THEREFORE ORDERED that: Plaintiff's Motion for Injunction and Temporary Restraining Order (Filing No. [10](#)) is denied.

DATED this 20th day of October, 2015.

BY THE COURT:

*s/ John M. Gerrard*

United States District Judge

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